IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1073 OF 2005

Minal Amrish Padgaonkar ... Petitioner

Vs.

Ganesh Atmaram Padgaonkar & Anr. ... Respondents

Mr. P.R. Arjunwadkar for the petitioner.

Mr. Milind Kamble for respondent 1.

Mr. D.R. More, A.P.P. for the State.

ALONG WITH

CRIMINAL WRIT PETITION NO.2334 OF 2006

Amrish Ganesh Padgaonkar & Ors. ... Petitioners

Vs.

Minal Amrish Padgaonkar & Ors. ... Respondents

Mr. Milind Kamble for the petitioners.

Mr. P.R. Arjunwadkar for respondent 1.

Mr. D.R. More, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATED : 6TH NOVEMBER, 2006.

P.C. :-

1. The petitioner in Writ Petition No.1073 of 2005 – Minal Amrish Padgaonkar has prayed for quashing and setting aside of the order dated 31/8/2004 passed by the learned Metropolitan Magistrate, 27th Court, Mulund, Mumbai in C.C. No.331/SS/2004 issuing process under section 500 of the Indian Penal Code (for short, "the IPC") against her. The said complaint is filed by respondent 1 – Ganesh Atmaram Padgaonkar, who is the father-in-law of the said Minal Padgaonkar. The petitioners in Criminal Writ Petition No.2334 of 2006 are the husband, father-in-law and mother-in-law respectively of the said Minal Amrish Padgaonkar, who is respondent 1 in Writ Petition No.2334 of 2006. The petitioners in Writ Petition No.2334 of 2006 have prayed, inter alia, that the FIR filed under section 498-A, 406 read with section 34 of the IPC in C.R. No.68 of 2004 dated 9/6/2004 by the said Minal Amrish Padgaonkar, which is registered with the Navghar Road Police Station, Mulund (E), Mumbai, be quashed and set aside.

2. I have heard the learned counsel appearing for the parties in both the petitions. I am informed by them that the parties have amicably settled the dispute involved in the writ petitions and consent terms have been filed in the Family Court, Mumbai at Bandra in Petition A-1320 of 2005 on 2/9/2006. Copy of the consent terms has been tendered in the

court. It is taken on record and marked "X". As per the consent terms, both the parties have withdrawn all the allegations made against each other in the said proceeding and the marriage between Amrish Ganesh Padgaonkar and Minal Amrish Padgaonkar stands dissolved by a decree of divorce by mutual consent. Clauses 6 and 7 of the said consent terms read thus :

> "6. Respondent has agreed to compound and withdraw the criminal complaint filed against the petitioner and his family members under section 498-A of the IPC pending before the Metropolitan Magistrate Court, Mulund, Mumbai.
>
> 7. Petitioner has agreed that his father Shri Ganesh Padgaonkar shall withdraw the criminal case against the respondent vide No.331/SS/2004 under section 501 of the IPC pending before the Metropolitan Magistrate Court, Mulund, Mumbai."

3. Relying on the judgment of the Supreme Court in ***B.S. Joshi and others v. State of Haryana and another, (2003) 4 SCC 675***, the learned counsel for the parties have prayed that in view of the consent terms filed by the parties, the criminal proceedings mentioned in clauses 6 and 7 of the consent terms be quashed. In ***B.S. Joshi's case (supra)***, the Supreme Court was considering the scope of inherent powers of the High Courts under section 482 of the Criminal Procedure Code (for

short, “Cr.P.C.”) read with Articles 226 and 227 of the Constitution of India to quash criminal proceedings. In that case, marriage between appellant 4 and respondent 2 was dissolved by a decree of divorce by mutual consent. Criminal proceedings were filed by respondent 2 – wife under section 498-A and 406 of the IPC against the appellants. A prayer for quashing of the said FIR was made by the appellants. It was rejected by the High Court on the ground that the offence under section 498-A and 406 of the I.P.C. are non-compoundable and the inherent powers under section 482 of the Cr.P.C. cannot be invoked to bypass the mandatory provision of section 320 of the Cr.P.C.

4. The Supreme Court set aside the High Court's order. The Supreme Court observed that where in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of the case, quash the proceedings. The Supreme Court observed that the special features in matrimonial matters are evident and it becomes the duty of the court to encourage genuine settlements of matrimonial disputes. The Supreme Court observed as under :

“14. There is no doubt that the object of

> introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hyper-technical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code."

5. In the facts and circumstances of that case, the Supreme Court quashed the FIR.

6. In my opinion, the ratio of the above judgment is clearly attracted to the facts of the present case. Since, the parties have amicably settled the dispute and the marriage between Amrish Ganesh Padgaonkar and Minal Amrish Padgaonkar is dissolved by a decree of mutual consent, it is in their interest to quash the criminal proceedings. The past needs to be buried and the peace must be maintained.

7. Hence, the following order :

O R D E R

> "The FIR lodged under section 498-A of the IPC in C.R. No.68 of 2004 dated 9/6/2004 registered by the Navghar Police Station, Mulund (East), Mumbai and order dated 31/8/2004 passed by the Metropolitan Magistrate, 27th Court, Mulund, Mumbai in C.C. No.331/SS/2004 of issuance of process under section 500 of the IPC are quashed and set aside."

8. Both the petitions are disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]